

## **REMARKS / DISCUSSION OF ISSUES**

Claims 1-10 are pending in the Application. Claims are not amended in view of applied art, but rather to replace European-style phraseology and reference characters common in European practice.

### **Translation of JP 2003031355**

Applicants gratefully acknowledge receipt of the translation of the referenced publication. However, Applicants respectfully submit that it is not clear from the MPEP, the Rules or the record that just because they filed an English-abstract of a Japanese reference, that it is incumbent upon them to garner a translation of the underlying document. Rather, as noted in the previous response, the undersigned attempted to obtain an English-language equivalent of JP 2003031355, to not success. While the undersigned acknowledges the duty of disclosure, the question of who must obtain a translation is not clear.

Finally, Applicants remain of the position that MPEP § 706.02 does not specify that if the Applicant files the English language abstract of a foreign reference, it is Applicant's responsibility to garner the translation. Rather, this portion of the MPEP guides the Examiner to garner the translation if the Examiner relies on the Abstract.

### **Finality of the Present Rejection is Improper**

Applicants respectfully submit that the finality of the rejection is improper. In the response filed in September, 2008, Applicants presented their position that the rejection failed to comply with MPEP § 706 at least because of the insufficiency of the disclosure of the English-language Abstract relied upon. Regardless of the ultimate responsibility for obtaining a translation of the underlying document, the reliance on the Abstract in the previous Office Action was improper due to its insufficiency as a reference in a rejection for anticipation.

As noted in the previous Response, the Abstract does not include a single reference character and therefore does not allow Applicants to garner a clear understanding of the structure shown in the representative drawing of the Abstract. Moreover, the rejection appeared to rely upon portions of JP 2003031355 that were not portions of the English-language Abstract. As such, Applicants are placed in the prejudicial position of having to attempt to discern the relevance of the applied art. Thus, a proper rejection under MPEP § 706 was not provided.

Therefore, because a proper rejection under MPEP § 706 was not provided, Applicants submit that a *prima facie* case of anticipation was not properly established. Accordingly, the finality of the present rejection is improper and should be withdrawn.

### **Rejections under 35 U.S.C. § 102**

Claims 1, 2 and 6-9 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Hanoaka* (JP 2003-031355). For at least the reasons set forth below, Applicants respectfully submit that the rejection is improper and should be withdrawn.

At the outset Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

A. Claim 1

Claim 1 recites:

*A display comprising:*

*a ground plate ;*

*at least one emitting layer ;and*

*at least one isolating separator layer each separating layer being reflective and being positioned in contacting manner on said ground plate, wherein the at least one emitting layer and the at least one isolating separator layer are positioned adjacent to each other in a contacting manner.*

In the filed application, an isolating separator layer that is reflective and positioned as set forth in claim 1 is denoted by reference character '10' in Figs. 1 and 3, for example. The reflective function of the isolating separator layer is shown in Fig. 3.

The Office Action directs Applicants to the partition 10 shown in drawing 1 of the applied art. The partition is not reflective, but rather transmissive of light from the luminous layer 21. Reflections of light from the luminous layer 21 are effected by a reflective film 12, but the partition 10 is and seemingly must be transmissive for the structure to provide light from the luminous layer 21. (See, for example drawing 3 of the applied art.)

For at least the reasons set forth above, Applicants respectfully submit that the applied art fails to disclose at least one feature of claim 1. Therefore, a *prima facie* case of anticipation has not been established, and claim 1 is patentable over the applied art. Moreover, claims 2-9, which depend from claim 1 directly or indirectly, are patentable for at least the same reasons and in view of their additionally recited subject matter.

B. General Comments on Rejections of Dependent Claims

Dependent claims 2-9 were rejected under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a). Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicants do not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any dependent claim is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

### **Conclusion**

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:  
Phillips Electronics North America Corp.

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